

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 901

Introduced by Senator Dunn

February 21, 2003

An act to add ~~Division 21 (commencing with Section 60000) to Chapter 10.5 (commencing with Section 15600) to Division 5 of the Financial Code, relating to community reinvestment financial institutions.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 901, as amended, Dunn. ~~Community~~ *Low-income credit unions: community reinvestment.*

Existing law, the California Credit Union Law, provides for the regulation of credit unions by the Commissioner of Financial Institutions. A willful violation of the California Credit Union Law is a crime.

This bill would authorize the commissioner to approve the establishment of low-income credit unions if certain conditions are satisfied with respect to the median income of the credit union's membership. The bill would authorize low-income credit unions to engage in various activities, including, among other things, establishing a new branch in a low-income area, establishing a new credit union in a low-income area, receiving shares, share drafts, and share certificates from nonmembers, and receiving secondary capital from nonnatural person members and nonnatural person nonmembers under specified conditions. The bill would require the commissioner to issue final regulations implementing these provisions by October 1, 2004, and to facilitate these provisions by, among other things, adding

underserved communities to the fields of membership of existing credit unions.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the regulation of various financial institutions by the Commissioner of Financial Institutions, including banks and credit unions. Existing federal law, the Community Reinvestment Act, encourages certain depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations. The act requires that those depository institutions' records be evaluated periodically in order to help meet the credit needs of the entire community in which they operate.~~

~~This bill would enact the California Community Reinvestment Act that would require the commissioner to evaluate and rate an institution's lending performance pursuant to certain standards. The bill would require these institutions, including state banks and credit unions, to make information in their public files available to the public for inspection upon request and at no cost. The bill would also require these institutions to provide specific notices in their main offices and branch offices. The bill would enact various related provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Division 21 (commencing with Section 60000)~~
- 2 *SECTION 1. The Legislature finds and declares the*
- 3 *following:*
- 4 *(a) Lending institutions, including banks, credit unions,*
- 5 *savings and loans, mortgage lenders, and insurance companies,*
- 6 *earn profits from fees and premiums paid by customers, as well as*



1 *through investments that are funded by the capital of their*
2 *customers.*

3 *(b) In exchange for profits, these institutions have a*
4 *responsibility to provide services to their customers. These*
5 *services include making loans and other community investments.*

6 *(c) In order to encourage depository institutions to meet this*
7 *responsibility, the United States Congress passed the Community*
8 *Reinvestment Act in 1977.*

9 *(d) The explicit goal of the Community Reinvestment Act is to*
10 *increase the amount of lending, investment, and services offered by*
11 *banks in the communities in which they operate. The Community*
12 *Reinvestment Act is intended to impact most, especially the*
13 *lending, investment and services provided in low- and moderate-*
14 *income neighborhoods, consistent with safe and sound banking*
15 *operations.*

16 *(e) Community Reinvestment Act compliance is assessed*
17 *through periodic examinations that are conducted by federal*
18 *regulators from four different regulatory agencies. After the*
19 *examination is complete, regulators give a Community*
20 *Reinvestment Act rating to each institution to denote the*
21 *institution's level of compliance.*

22 *(f) The regulations by which banks are judged are vague and*
23 *insufficient to accomplish the stated goal of the act.*

24 *(g) Presently, the Community Reinvestment Act regulations do*
25 *not do the following:*

26 *(1) Specify investment, lending, or service requirements.*

27 *(2) Enumerate specific investment goals for various types of*
28 *lenders.*

29 *(3) Require specific geographic investments for lenders.*

30 *(4) Specify what types of loans and investments do not qualify*
31 *in the assessment of Community Reinvestment Act compliance.*

32 *(h) Because of the vagueness of these regulations, and to*
33 *achieve the desired effect of the Community Reinvestment Act, the*
34 *state must take action to increase lending, investment, and services*
35 *in low- and moderate-income communities.*

36 *(i) It is the policy of the state to establish public policy that*
37 *encourages lending institutions to provide financial and related*
38 *services to residents and businesses in their communities in order*
39 *to stimulate economic activities in the communities they serve. The*

1 *unrealized ideals of Community Reinvestment Act are consistent*
2 *with the state's goals.*

3 *(j) Investments, lending, and services in low- and*
4 *moderate-income communities result in increased income, and*
5 *ownership and employment opportunities for low-income*
6 *residents, businesses, and other community growth efforts.*

7 *(k) Credit unions are one important part of the lending*
8 *community. The goals for community reinvestment as enumerated*
9 *above are furthered by the presence of credit unions in the state's*
10 *low-income communities.*

11 *SEC. 2. Chapter 10.5 (commencing with Section 15600) is*
12 *added to Division 5 of the Financial Code, to read:*

13
14 *CHAPTER 10.5. COMMUNITY REINVESTMENT*

15
16 *Article 1. General Provisions*

17
18 *15600. (a) Upon application by the credit union and*
19 *approval by the commissioner, a credit union shall be designated*
20 *as a "low-income credit union" if either of the following*
21 *conditions are met:*

22 *(1) At least 50 percent of a substantial and well-defined*
23 *segment of the credit union's members earn no more than 80*
24 *percent of the median income for California, or the community*
25 *area as established by the United States Census Bureau, the United*
26 *States Department of Housing and Urban Development, or the*
27 *California Department of Finance, whichever is higher.*

28 *(2) At least 50 percent of the potential primary members of the*
29 *credit union's members earn no more than 80 percent of the median*
30 *income for California, or the community area as established by the*
31 *United States Census Bureau, United States Department of*
32 *Housing and Urban Development or the California Department of*
33 *Finance, whichever is higher.*

34 *(b) For the purposes of paragraphs (1) and (2) of subdivision*
35 *(a), natural persons enrolled as full-time or part-time students in*
36 *a college, university, high school, or vocational school shall be*
37 *conclusively presumed to satisfy the low-income earnings*
38 *threshold.*

39 *(c) The commissioner may adjust the earnings levels set forth*
40 *in subdivision (a) for geographic areas with higher costs of living.*

1 (d) *If the commissioner denies an application for low-income*
2 *credit union status, the credit union may appeal the denial to the*
3 *Secretary of Business, Transportation and Housing.*

4 15601. (a) *The authority under this chapter is limited to*
5 *low-income credit unions for purposes of any of the following:*

6 (1) *Providing financial services through an existing branch in*
7 *the low-income area.*

8 (2) *Establishing a new branch in a low-income area.*

9 (3) *Establishing a new credit union in a low-income area.*

10 (4) *Providing financial services, including share and loan*
11 *services, to persons meeting the requirements set forth in*
12 *subdivision (a) of Section 15600.*

13 (b) *Notwithstanding subdivision (a), a credit union may*
14 *establish a branch or provide services through a shared service*
15 *center arrangement, and may cash checks, sell negotiable*
16 *instruments, including traveler's checks and money orders, and*
17 *money transfer instruments to any person within the credit union's*
18 *field of membership.*

19 15602. (a) *Every low-income credit union shall be permitted*
20 *to do the following:*

21 (1) *Receive shares, share drafts and share certificates from*
22 *nonmembers.*

23 (2) *Receive secondary capital from nonnatural person*
24 *members and nonnatural person nonmembers on the following*
25 *conditions:*

26 (A) *The secondary capital shall be established as an uninsured*
27 *secondary capital or other form of nonshare account.*

28 (B) *The maturity of the secondary capital shall be for a*
29 *minimum of five years.*

30 (C) *The secondary capital may not be redeemable prior to*
31 *maturity.*

32 (D) *The secondary capital may not be insured by the National*
33 *Credit Union Share Insurance Fund or any other approved insurer*
34 *provided for in Section 14858 of the Financial Code or any*
35 *governmental or private entity.*

36 (E) *The secondary capital holder's claim against the credit*
37 *union shall be subordinate to all other claims including those of*
38 *shareholders, creditors, and the National Credit Union Share*
39 *Insurance Fund, or an approved insurer provided for in Section*
40 *14858 or a private entity.*

1 (F) Funds deposited into the secondary capital, including
2 interest accrued and paid into the secondary capital, shall be
3 available to cover operating losses realized by the credit union that
4 exceed its net available reserves and undivided earnings (i.e.,
5 reserves and undivided earnings exclusive of allowance for loan
6 losses), and to the extent funds are so used, the credit union shall
7 under no circumstances restore or replenish the account. The
8 credit union may, in lieu of paying interest into the secondary
9 capital, pay interest accrued on the secondary capital directly to
10 the investor or into a separate account from which the secondary
11 capital investor may make withdrawals. Losses shall be
12 distributed prorata among all secondary capital held by the credit
13 union at the time the losses are realized.

14 (G) The secondary capital may not be pledged or provided by
15 the account holder as security on a loan or other obligation with
16 the credit union or any other party.

17 (H) In the event of merger or other voluntary dissolution of the
18 credit union, other than merger into another low-income
19 designated credit union, the secondary capital shall, to the extent
20 they are not needed to cover losses at the time of merger or
21 dissolution, be closed and paid out to the account holder. If the
22 merger of the credit union involves another low-income designated
23 credit union, the account owner and the surviving credit union may
24 mutually agree to maintain the secondary capital account under
25 the existing terms.

26 (I) A secondary capital contract agreement shall be executed
27 between an authorized representative of the account holder and
28 the credit union that accurately establishes the terms and
29 conditions of this section and contains no provisions inconsistent
30 with this section.

31 (3) Exercise any other expanded authorities granted with
32 approval of the commissioner.

33 (b) Secondary capital authorized in this section does not limit
34 the authority of the commissioner to approve other forms of equity
35 capital pursuant to Section 14400.

36

Article 2. Miscellaneous

15610. (a) This chapter shall not be deemed to require a financial institution to make loans or investments or to provide services that are inconsistent with safe and sound operations.

(b) The commissioner shall issue final regulations to implement the provisions of this chapter by October 1, 2004.

15611. The commissioner shall undertake every effort to facilitate the provisions of this chapter, including, but not limited to, the following:

(a) By providing additional resources to existing credit unions who undertake to serve the communities, including, but not limited to, state community development deposits, nonmember deposits, secondary capital, grants and loans, and technical assistance either in the form of services or grants for services provided by outside agents.

(b) By adding underserved communities to the fields of membership of existing credit unions.

(c) By licensing new credit unions.

(d) By removing restrictions that act as a barrier to the community development process, including, but not limited to, limitations on fixed assets, nonmember deposit, ad net worth requirements.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 21, 2003 (JR 11)